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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GREGORY NAKSHIN,	:
	:
Plaintiff,	:
	:
-against-	:
	:
MICHAEL B. MUKASEY, Attorney General	:
of the United States Department of Justice,	:
	:
Defendant.	:
	:
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07 Civ. 4140 (AKH)

ECF case

**DEFENDANT’S STATEMENT OF
UNDISPUTED MATERIAL FACTS
PURSUANT TO LOCAL CIVIL
RULE 56.1**

Pursuant to Civil Rule 56.1 of the Local Civil Rules of the United States District Court for the Southern District of New York, defendant Michael B. Mukasey, Attorney General of the United States, by and through his attorney, Michael J. Garcia, states that there is no genuine issue to be tried with respect to the following material facts:

1. Plaintiff Gregory Nakshin (“plaintiff” or “Mr. Nakshin”) applied for the position of Automated Litigation Support Specialist (“Liti-Support Specialist”) for the United States Attorney’s Office for the Eastern District of New York (the “EDNY”) in May of 2002. See Declaration of Joy Fairtile, dated September 26, 2008 (“Fairtile Decl.”) ¶ 5; Declaration of Daniel Filor dated September 26, 2008 (“Filor Decl.”) Exh. B, Transcript of July 9, 2008 Deposition of Gregory Nakshin (“Nakshin Depo. Tr.”) at 29.

2. In August 2002, plaintiff was informed by the EDNY that he was being given a tentative offer of employment as a Lit-Support Specialist, contingent upon his successful completion of a background investigation. See Nakshin Depo. Tr. at 35; Fairtile Decl. ¶ 6; Fairtile Decl. Exh. D.

3. The EDNY Lit-Support Specialist position was designated at a security clearance level of “Special-Sensitive” which requires a “Special Background Investigation” because the employee would have access to “Top Secret National Security Information.” See Fairtile Decl. ¶ 4; Fairtile Decl. Exhs. B, D.

4. To work as the Lit-Support Specialist at the EDNY, Mr. Nakshin was required to pass the Special Background Investigation, which consisted of a variety of inquiries including personal interviews of the subject and other sources, a credit report search, and FBI name and fingerprint checks. See Fairtile Decl. ¶¶ 4, 7; Fairtile Decl. Exh. D.

5. Based on the discovery of multiple charge-offs and/or late payments in Mr. Nakshin’s credit report, the Department of Justice’s Executive Office of U.S. Attorney’s (the “EOUSA”) informed the EDNY that, in order for him to pass the background check, Mr. Nakshin would need to provide satisfactory documentation to demonstrate that the credit report issues had been resolved. See Fairtile Decl. ¶¶ 8-11; Fairtile Decl. Exh. E.

6. EDNY personnel communicated the need for Mr. Nakshin to resolve the credit report issues several times during the months of September 2002 through December 2002. See Fairtile Decl. ¶¶ 8-10; Fairtile Decl. Exh. E; Nakshin Depo. Tr. 47-51. Mr. Nakshin submitted four responses to the EDNY’s requests for information to

resolve his credit report issues. See Fairtile Decl. ¶¶ 11-14; Fairtile Decl. Exhs. F-I; Nakshin Depo. Tr. 55-56, 74-105. EOUSA informed the EDNY that Mr. Nakshin's responses were insufficient to resolve his credit report issues, and that, absent further information, Mr. Nakshin would not be able to pass his background investigation. See Fairtile Decl. ¶¶ 8, 12-15.

7. Because the EDNY was in need of having the duties of the Lit-Support Specialist fulfilled and was informed by EOUSA that, without further explanation of his credit issues, Mr. Nakshin would not be able to pass his background investigation, Ms. Joy Fairtile made the decision to withdraw Mr. Nakshin's tentative offer of employment. See Fairtile Decl. ¶¶ 16-17; Fairtile Decl. Exh. J.

8. The EDNY did not hire any applicant to fill the Lit-Support Specialist position, and instead, the duties that would have been performed by the Lit-Support Specialist were distributed among other current EDNY employees, temporary workers and student interns. See Fairtile Decl. ¶ 19.

By submitting this statement, defendant does not waive his right to contend that any of the above-referenced facts are not material to the present action.

Dated: New York, New York
September 26, 2008

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